

SUPERIOR COURT

**ALBERT THERIEN and
DORIS THERIEN
Defendants.**

State of Rhode Island, having offices located at 235 Promenade Street, Providence, Rhode Island, 02908.

(2) Defendant, Albert Therien, is a resident of the State of Rhode Island with an address of 40 Dulles Street in the Town of Cumberland, Rhode Island 02864.

(3) Defendant, Doris Therien is a resident of the State of Rhode Island with an address of 40 Dulles Street in the Town of Cumberland, Rhode Island 02864.

JURISDICTION & VENUE

(4) Subject matter jurisdiction in this case is properly conferred in this Court pursuant to R.I. Gen. Laws § 42-17.1-2(21)(v), as amended, and R.I. Gen. Laws § 8-2-13, as amended.

(5) Personal jurisdiction over the Defendants in this case is properly conferred in this Court based upon Defendants' presence in, operation of, and ownership of real property located within the State of Rhode Island.

(6) Venue is properly placed in this Court pursuant to R.I. Gen. Laws § 42-17.1-2(21)(v) and R.I. Gen. Laws § 9-4-3, as amended.

FACTS

(7) According to the Town of Cumberland land evidence records, Defendants, Albert and Doris Therien, are the owners of record for the subject property (the "Property") which is identified as Cumberland Assessor's Map/Plat 52, Lot 331, and is located at 3585 Mendon Road in the Town of Cumberland, Rhode Island.

(8) The Property was operated as a retail gasoline service station and includes three underground storage tanks ("USTs" or "tanks") which are used for storage of petroleum products. (the "Facility").

(9) The Facility is registered with the Department pursuant to Section 6.00 of the Department's *Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials* (the "UST Regulations") as UST Facility # 01177.

(10) The USTs are registered with DEM as follows:

<u>UST ID No.</u>	<u>Date Installed</u>	<u>Capacity</u>	<u>Substance Stored</u>
007	1991	10,000 gallons	Gasoline
008	1991	6,000 gallons	Gasoline
009	1991	8,000 gallons	Gasoline

(11) The USTs are subject to the UST Regulations.

(12) On or about December 30, 2004 the Department sent a Notice of Violation (the "NOV") to the Defendants via certified mail.

(13) The NOV ordered the Defendants within thirty (30) days to:

- (a) Submit written verification that they are now in compliance with the inventory control record keeping requirements as set forth in Rules 8.07(B)(3), 11.02(B)(4) and 11.03 of the 2002 UST Regulations;
- (b) Submit written verification to that they are now in compliance with the line tightness testing requirements set forth in Rule 8.08(B) of the 2002 UST Regulations;
- (c) Submit written verification that they are now in compliance with the line leak detector testing requirements set forth in Rule 8.10 of the 2002 UST Regulations;
- (d) Submit written verification that they are now in compliance with the monthly CMS testing requirements set forth in Rule 8.13€ of the 2002 UST Regulations;
- (e) Submit written verification to DEM that they are now in compliance with the annual CMS certification/testing requirements set forth in Rule 8.13(F) of the 2002 UST Regulations;
- (f) Pay the administrative penalty of twenty-one thousand eight hundred and sixty-six (\$21, 866.00) dollars.

(14) The Defendants failed to request an administrative hearing, the NOV and associated administrative penalties contained within (pursuant to *R.I. Gen. Laws* §§ 42-17.1.2(21)(vi) and

42-17.6-4(b)) automatically became a Final Compliance Order enforceable in Superior Court.

(15) On or about August 27, 2009 the Department sent a Notice of Violation to the Defendants via certified mail.

(16) The NOV ordered the Defendants within thirty (30) days to:

- (a) Written verification that the ATG has been utilized to perform valid 0.2-gallon per hour leak tests for UST nos. 007 and 008 at least once within the last 30 days, in accordance with Rule 8.08(B)(2) of the UST Regulations;
- (b) Written verification that they are now in compliance with the monthly ATG testing requirement set forth in Rule 8.15(E) of the UST Regulations;
- (c) Written verification that the tank field observation well is now in compliance with the construction requirements as forth in Rule 8.19 of the UST Regulations and Appendix I of the DEM Rules and Regulations for Groundwater Quality, as amended (the “Groundwater Regulations”). The soil inside the well casing shall be removed to allow for proper operation of the well or a new tank field observation well may need to be installed (in accordance with the Groundwater Regulations) for tank tightness testing purposes;
- (d) Pay the administrative penalty of nine thousand six hundred and eight-one (\$9,681.00) dollars.

(17) The Defendants did not request an administrative hearing, the NOV and associated administrative penalties contained within (pursuant to *R.I. Gen. Laws* §§ 42-17.1.2(21)(vi) and 42-17.6-4(b)) automatically became a Final Compliance Order enforceable in Superior Court.

(18) Named also in the August 27, 2009 NOV was the operator of said facility at the time, DCPKM Enterprises, Inc., they did request an administrative hearing, however they failed appear at the Prehearing Conference and a Final Order of Default was entered on August 5, 2010 and their appeal was dismissed.

(19) On or about February 20, 2014 the Department sent a Notice of Violation to the Defendants via certified mail.

(20) The NOV ordered the Defendants within thirty (30) days to:

- (a) Submit the Compliance Certification Forms to the DEM in accordance with Rule 8.03 of DEM's UST Regulations.
 - (d) Pay the administrative penalty of three thousand (\$3,000.00) dollars.
- (21) The Defendants did not request an administrative hearing, the NOV and associated administrative penalties contained within (pursuant to *R.I. Gen. Laws* §§ 42-17.1.2(21)(vi) and 42-17.6-4(b)) automatically became a Final Compliance Order enforceable in Superior Court.
- (22) The Property continues to be owned by the Defendants, Albert and Doris Therien.
- (23) Since the NOVs were issued and became Final Compliance Orders, the Defendants have failed to comply with all the Orders and the terms of the NOVs.
- (24) The Defendants' failure to comply with the NOVs represents a continuing violation of the Department's UST Regulations.
- (25) As of the date of the filing of this Complaint, the Defendants have failed to: (a) comply with the all the terms NOV's; (b) comply with the all orders of the Final Compliance Orders; and (c) pay the administrative penalties for all three NOV's totaling of thirty-four thousand five hundred and forty-seven (\$34,547.00) dollars as ordered by the NOVs and the Final Compliance Orders.

COUNT I

(Violation of Final Compliance Order)

- (26) Plaintiff hereby restates and incorporates by reference the allegations contained in Paragraphs 1 through 25 above.
- (27) The NOVs issued to the Defendants on or about December 30, 2004, August 27, 2009 and February 20, 2014 were issued pursuant to *R.I. Gen. Laws* § 42-17.1-2(21).
- (28) In accordance with *R.I. Gen. Laws* § 42-17.1-2(21), the aforementioned NOVs notified

the Defendants of the facts giving rise to the alleged violations; of the statutes and/or regulations violated; and of the Defendants' right to request an administrative hearing before DEM's Administrative Adjudicatory Division by filing a request for hearing within twenty (20) days of service of the NOV.

(29) Defendants, by failing to appeal the issuance of the NOV, are deemed to have waived their rights to an adjudicatory hearing resulting in the NOV automatically transforming in to a Final Compliance Order of the Department.

(30) Pursuant to *R.I. Gen. Laws* § 42-17.1-2(21)(vi), a Final Compliance Order is enforceable in the Superior Court through injunctive proceedings wherein the burden of proving error in the Final Compliance Order rests with the Defendants.

(31) Defendants have failed or refused to comply with the all of the requirements of the NOV's by not performing all the actions required and paying the administrative penalties as required.

(32) Each day of non-compliance represents a continuing violation of the Department's UST Regulations.

RELIEF REQUESTED

WHEREFORE, the Plaintiff, Janet L. Coit, in her capacity as Director of the Department, hereby requests that this honorable Court enter judgment in the Department's favor and grant the following relief:

Temporary, Preliminary and Permanent Injunctive Relief, ordering Defendants to:

- A. Immediately take all necessary actions to bring the Property into compliance with the UST Regulations by submitting Compliance Certification Forms to DEM in accordance with Rule 8.03 of DEM's UST Regulations and bringing the facility into compliance in accordance DEM's UST Regulations.
- B. If Defendants fail to abide by the terms of paragraph A, as stated above within sixty (60) days, then the Defendants, any operators or assignees, shall be

restrained and enjoined from operating any business on the Property until such time as they are in compliance with the UST Regulations as stated above;

- C. Within thirty (30) days, remit to the Department the administrative penalty of Thirty Four Thousand Five Hundred and Forty-Seven (\$34,547.00) Dollars as set forth in the NOVs; and
- D. Such other relief as this Court deems just and equitable in accordance with the facts of this case.

VERIFICATION

I, Tracey D'Amadio Tyrrell, Supervising Environmental Scientist, Department of Environmental Management, Office of Compliance & Inspection, first being duly sworn upon oath, hereby state that to the best of my knowledge and belief, the facts contained in this Complaint and the exhibits attached hereto are, true and accurate.

Name: Tracey D'Amadio Tyrrell
Title: Supervising Environmental Scientist

Date: _____

**STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE**

Subscribed and sworn to before me this ____ day of November, 2015.

Notary Public
My commission expires:

Respectfully submitted,
JANET L. COIT,
in her capacity as DIRECTOR,
Rhode Island Department of
Environmental Management
By her attorney:

Dated: November ____, 2015

/s/Tricia Quest
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